BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD S. SERRANO)	
Claimant)	
VS.)	
) Docket No. 176,40	76,402
MODERN AIR CONDITIONING COMPANY Respondent)	
AND))	
FEDERAL MUTUAL INSURANCE and)	
ALLIED INSURANCE COMPANY	,)	
Insurance Carrier)	

ORDER

This case comes before the Appeals Board on remand from the Court of Appeals. The Court of Appeals' opinion was filed February 16, 2001.

ISSUES

This case involves a dispute between claimant's present and former attorneys over fees and costs. The Board affirmed the ALJ's assessment of one-half of the cost of the hearing transcript to each of the two attorneys involved in the fee dispute. Because the Court of Appeals interpreted K.S.A. 44-555 to require the costs to be assessed to a party, the issue was remanded to the Board. The specific direction from the Court of Appeals is as follows:

The attorneys may be the persons with the direct interest in this issue but they are not parties to the litigation. Accordingly, the attorneys cannot be assessed the reporter's costs, and this case must be remanded for an order assessing the costs to a party or apportioning the costs among the parties.

We affirm the \$600 attorney fee awarded to Barger. We reverse the apportionment of costs between the attorneys and remand for an order assessing the costs to a party or parties.¹

¹ The Court of Appeals' February 16, 2001 Memorandum Opinion is styled, "David O. Alegria, Appellant and Diane F. Barger, Appellee." Docket No. 84,651.

IT IS SO ORDERED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board must choose between the claimant, the respondent and the insurance carriers for the assessment of all or a portion of the cost of the reporter's fee and transcripts of the August 6, 1999 hearing before Judge Avery on the Motion to Determine Attorney's Fees filed by Ms. Barger. Respondent and its insurance carriers had no interest in this issue and did not appear at the hearing, nor did claimant. But the dispute was between claimant's present and former counsel over attorney's fees for representing claimant. Therefore, the Board finds that the costs of the motion hearing should be assessed against the claimant.

AWARD

WHEREFORE, it is the decision of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated August 12, 1999, and the Order of the Appeals Board dated December 28, 1999, should be, and are hereby, modified as follows:

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the claimant for the Hearing of August 6, 1999.

Dated this ____ day of April 2001. BOARD MEMBER BOARD MEMBER

DISSENT

I respectfully disagree with the majority. The costs directly relate to administering the Workers Compensation Act and, therefore, it is more reasonable to burden the respondent and its insurance carrier with those costs rather than the injured worker.

BOARD MEMBER

c: David O. Alegria, Topeka, KS
John G. Atherton, Emporia, KS
John A. Bausch, Topeka, KS
Diane F. Barger, Wichita, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director